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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026(REG)

4 - - - - - x

5 In the Matter of:

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7 MOTORS LIQUIDATION COMPANY,

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9 Debtor.

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13 U.S. Bankruptcy Court

14 One Boling Green

15 New York, New York

16

17 March 28, 2013

18 11:01 AM

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21 B E F O R E :

22 HON ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE

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Page 2

1      Hearing re: Doc# 6739 Objection to Claims re: Walter J.  
2      Lawrence

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25      Transcribed by: Dawn South

Page 3

1 A P P E A R A N C E S :  
2 WEIL, GOTSHAL & MANGES LLP  
3 Attorney for the GUC Trust  
4 767 Fifth Avenue  
5 New York, NY 10153-0119  
6  
7 BY: DAVID N. GRIFFITHS, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Mr. Griffiths you don't  
3 seem to have much company today.

4 MR. GRIFFITHS: Good morning, Your Honor, David  
5 Griffiths of Weil, Gotshal & Manges for the Motors  
6 Liquidation Company GUC Trust.

7 Your Honor, we'd hoped to have a more fulsome  
8 hearing at the time that we scheduled it, we had about 15  
9 claimants wanting a hearing at the beginning of last month,  
10 and miraculously they've all settled their claims with us,  
11 leaving only Mr. Walter Lawrence as the final employee  
12 claimant that we have to handle.

13 Mr. Lawrence, we've attempted to communicate with  
14 him by telephone, by email, and by mail and haven't been  
15 successful, nor has Mr. Lawrence contacted us since 2010,  
16 and I had Garden City Group try to get in touch with him by  
17 doing a reverse look up. So we just can't locate him.

18 Your Honor, if you're -- I don't know if you're  
19 familiar with the pleadings.

20 THE COURT: I am familiar with the pleading, and  
21 since he's not appearing orally, Mr. Griffiths, my  
22 inclination, subject to your right to be heard, is that I  
23 shouldn't hear oral argument from you either and that I  
24 should rule based solely on the papers.

25 MR. GRIFFITHS: Agreed, Your Honor. The GUC Trust

1 is more than happy to rely on the existing submissions.

2 THE COURT: Okay. And I will do that momentarily,  
3 vis-à-vis, Mr. Lawrence.

4 Are there other people who are affected by your  
5 motion where you want to either enter defaults or otherwise  
6 address their claims, or are we just down to Mr. Lawrence  
7 today?

8 MR. GRIFFITHS: There are not, Your Honor.

9 Mr. Lawrence, I believe is the last employee claimant of the  
10 3,000 employee claims that this Court has handled.

11 THE COURT: Okay. Then I'm going dictate a  
12 ruling, Mr. Griffiths, and you're free to remain standing or  
13 you can sit down while I do that.

14 MR. GRIFFITHS: Thank you, Your Honor, I'll take  
15 notes sitting down.

16 THE COURT: Okay.

17 In this contested matter in the jointly  
18 administered Chapter 11 cases of Motors Liquidation Company  
19 and its affiliates, the GUC Trust, which is a trust formed  
20 for the benefit of Old GM's creditors, moves to disallow the  
21 claim of Walter Lawrence, a former employee represented by  
22 the UAW under the 82nd omnibus objection.

23 For reasons I'll explain, the claim must be  
24 disallowed.

25 It does not have the harshness that other claims

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1 disallowance matters in this case have however, because for  
2 the reasons that I'll state, to the extent Mr. Lawrence has  
3 any claims, though I frankly doubt it, he can assert those  
4 claims against New GM, he cannot however assert them against  
5 Old GM or the GUC Trust.

6 My findings of fact and conclusions of law in  
7 connection with this determination are as follows.

8 On June 1st, 2009 Old GM and some of its  
9 affiliates commenced Chapter 11 cases in this court.

10 Then on June 26th, 2009, as is widely known, the  
11 debtors entered into a master sale and purchase agreement  
12 under which they sold most of their assets and liabilities  
13 to what we now call New GM.

14 On July 5th, 2009 I entered an order approving the  
15 sale and the underlying master purchase agreement, and the  
16 sale closed about five days thereafter at which time New GM  
17 took over most of the assets of Old GM.

18 The master purchase agreement contained several  
19 provisions relevant to the UAW claims.

20 Summarizing them and translating them from their  
21 more technical legalese, if I can use that expression to  
22 plain English, New GM assumed, that is New GM adopted or  
23 acquired all employment-related obligations and liabilities  
24 pertaining to workers who were affiliated with the UAW. In  
25 fact this was a result that the UAW fought for early in the

1 bankruptcy case protecting UAW workers from the possibility  
2 that their claims would get less favorable treatment if they  
3 remained against Old GM.

4 The employment-related obligations assumed by New  
5 GM included any claims of whatever type or nature that were  
6 related to the employment or employee benefits of UAW  
7 workers.

8 On November 9th, 2009 Mr. Lawrence filed a timely  
9 claim as a secured creditor, and I did mean secured,  
10 although I have great difficulty seeing whether even if he  
11 had any other claims they would be secured claims, in the  
12 amount of \$160,000, approximately, relating to, "A GM UAW  
13 supplemental pension (hourly) agreement."

14 His claims were based on a series of events that  
15 are not particularly relevant to what's before me today, but  
16 which were fully and unsuccessfully litigated in District  
17 Court in Florida.

18 There he brought claims against both GM's hourly  
19 rate employees pension plan and General Motors Corporation  
20 itself.

21 By way of example this pension plan, like many, if  
22 not most, had its assets in a separate trust and it was a  
23 lawsuit against both that individual trust and GM.

24 On cross-motions for summary judgment the District  
25 Court entered judgment in favor of the pension plan with

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1 respect to Mr. Lawrence's claims; however, Mr. Lawrence's  
2 claims against GM -- actually that's Old GM now -- were  
3 stayed due to the GM bankruptcy and were ultimately  
4 dismissed pending a showing that the bankruptcy stay had  
5 been lifted for other good cause.

6 Mr. Lawrence then filed a motion to lift the stay  
7 in this court.

8 After consideration of the Sonnax Factors I denied  
9 that motion.

10 Mr. Lawrence appealed it and my order was affirmed  
11 with a written decision by then District Judge Richard  
12 Holwell of the District Court.

13 That however was for relief from the stay. Now I  
14 have to consider whether Mr. Lawrence has a claim against  
15 Old GM.

16 Though the merits of Mr. Lawrence's claims are not  
17 particularly before me, I simply state that by way of  
18 background Mr. Lawrence asserts that Old GM acted wrongfully  
19 when it affected rights to repayment after it overpaid  
20 Mr. Lawrence on his pension and when it honored a federal  
21 tax levy on his pension benefits after a showing that  
22 Mr. Lawrence had not paid federal taxes for many years. I  
23 don't need to supplement it beyond that.

24 Now I need to consider whether Mr. Lawrence's  
25 claim against Old GM can be asserted here.

1 Pursuant to procedures that were set up earlier in  
2 Old GM's bankruptcy case omnibus claims objections were  
3 filed to Mr. Lawrence's claim among many others. He  
4 responded to that objection, which is the matter we're  
5 dealing with now.

6 Turning now to my conclusions of law.

7 A proof of claim is *prima facie* evidence of the  
8 validity and the amount of the claim and the objector, which  
9 here is the GUC Trust, bears the initial burden of  
10 persuasion. See *In re Onita Limited*, 400 B.R. at page 389,  
11 a 2009 decision by Judge Gropper of this court.

12 What that means translating from the Latin is that  
13 once a claimant like Mr. Lawrence here files a proof of  
14 claim, assuming that the claim is satisfactory in the first  
15 instance, it's good enough to get paid the amount set forth  
16 in the claim unless there's an objection.

17 Once there is an objection however the burden  
18 shifts to the claimant if the objector produces evidence  
19 equal in force to the claim that was previously filed, which  
20 if believed, would refute at least one of the allegations  
21 that's essential to the claimant's legal burden.

22 When the burden is shifted back to the claimant  
23 the claimant must then prove by a preponderance of the  
24 evidence that under applicable law the claim should be  
25 allowed.

1           Here however I don't need to make nice  
2           distinctions based on who has the burden. The facts here  
3           are very clear. This claim can't be allowed, because to the  
4           extent it's valid it's not capable of being asserted against  
5           Old GM because New GM assumed this type of claim.

6           Mr. Lawrence was undisputedly represented by or affiliated  
7           with the UAW.

8           Under the sale order that I described earlier on  
9           all employment-related obligations pertaining to UAW  
10           employees must be asserted against either the union,  
11           although I have some difficulty seeing how the union has any  
12           responsibility here, and/or New GM.

13           Because the claim before me is based on  
14           liabilities that New GM assumed the claim against Old GM  
15           must be disallowed and expunged.

16           In this decision I take no position as to whether  
17           Mr. Lawrence could succeed if and when he went against New  
18           GM. It's possible that the same factors that caused the  
19           District Court to rule on summary judgment in favor of the  
20           pension trust would apply no less to any claims if they were  
21           then asserted against New GM, but that's a matter as to  
22           which I ultimately express no view.

23           Thus the GUC Trust's motion to disallow the claim  
24           and expunge it from the claims register is granted.

25           Mr. Griffiths, you're to settle an order in

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1 accordance with this ruling that states in substance that  
2 for the reasons dictated on the record Mr. Lawrence's claim  
3 is disallowed. Settle that order on -- considering he's pro  
4 se -- a longer time than you would do it if you were  
5 opposing a lawyer. Frankly, I don't see a hurry. Give him  
6 two full weeks notice by mail.

7 For the avoidance of doubt the time to appeal this  
8 determination will run from the time of the resulting order  
9 and not from the time of this dictated decision.

10 MR. GRIFFITHS: Yes, Your Honor.

11 THE COURT: Do we have any further business?

12 MR. GRIFFITHS: No, Your Honor, that concludes our  
13 matters.

14 THE COURT: All right then, have a good day.

15 We're adjourned.

16 MR. GRIFFITHS: Thank you, Your Honor.

17 (Whereupon, these proceedings were concluded at 11:15  
18 a.m.)

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1 C E R T I F I C A T I O N

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3 I, Dawn South, certify that the foregoing transcript is a  
4 true and accurate record of the proceedings.

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8 AAERT Certified Electronic Transcriber CET\*\*D-408

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11 Veritext

12 200 Old Country Road

13 Suite 580

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16 Date: March 28, 2013

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